

1 DAVID CHIU, State Bar #189542
City Attorney
2 WAYNE K. SNODGRASS, State Bar #148137
JAMES M. EMERY, State Bar #153630
3 LAUREN E. WOOD, State Bar #280096
ADAM M. SHAPIRO, State Bar #267429
4 Deputy City Attorneys
City Hall, Room 234
5 1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-5408
6 Telephone: (415) 554-4628 (Emery)
(415) 554-4261 (Wood)
7 Facsimile: (415) 554-4699
E-Mail: jim.emery@sfcityatty.org
8 lauren.wood@sfcityatty.org
adam.shapiro@sfcityatty.org
9 Attorneys for Defendant
10 CITY AND COUNTY OF SAN FRANCISCO
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SELINA KEENE, MELODY FOUNTILA,
MARK MCCLURE,

Plaintiffs,

vs.

CITY and COUNTY OF SAN FRANCISCO;
LONDON BREED, Mayor of San Francisco in
her official capacity; CAROL ISEN, Human
Resources Director, City and County of San
Francisco, in her official capacity; DOES 1-
100,

Defendants.

Case No. 4:22-cv-01587-JSW

**ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED**

(Civil L.R. 3-12(b) and 7-11)

Judge: Hon. Jeffrey S. White

Trial Date: None set.

INTRODUCTION

The City and County of San Francisco (the “City”) respectfully asks the Court to consider whether the above-captioned action (the “*Keene* Action”) is related to one later filed action: *Monegas v. City and County of San Francisco*, N.D. Cal. Case No. 3:22-cv-004633-JD (the “*Monegas* Action”).

The Court previously related six other actions to the *Keene* Action: *Gozum v. CCSF*, No. 4:22-cv-03975-JSW; *Guardado, et al. v. CCSF*, No. 4:22-cv-04319-JSW; *Shaheed, et al. v. CCSF*, No. 4:22-cv-06013-JSW; *Debrunner, et al. v. CCSF, et al. (Debrunner Action)*, No. 4:22-cv-07455-JSW; *Cook v. CCSF*, No. 4:22-cv-07645-JSW; *Sanders v. San Francisco Public Library*, No. 23-cv-00211-JSW (collectively “Related Vaccine Actions”). The recently filed *Monegas* Action bears a substantially similar relationship to *Keene* as the Related Vaccine Actions and likewise should be related.

The *Monegas* Action, filed on January 17, 2023, was also brought by a former City employee who alleges she was terminated for failure to comply with the City’s Covid-19 vaccination policy. Like the plaintiffs in the *Debrunner* Action, Monegas has asserted claims under the Americans With Disability Act (ADA), and like the Plaintiffs in the other Related Vaccine Actions, Monegas seeks injunctive relief related to the City’s COVID-19 vaccination policy. A copy of the Complaint in the *Monegas* Action is attached as **Exhibit A** to the accompanying Declaration of Adam M. Shapiro (“Shapiro Decl.”).

On May 1, 2023, Judge Donato granted the City’s motion to dismiss Monegas’s First Amended Complaint, finding that Monegas “has not plausibly alleged a disability,” and that Monegas’s “claims are untimely on their face.” Shapiro Decl. Ex. B at 2. Pursuant to the Court’s order, Monegas may file an amended complaint by May 22, 2023. *Id.* at 3.

DISCUSSION

Two cases are related if:

- (1) The actions concern substantially the same parties, property, transaction, or event; and
- (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.

1 N.D. Cal. Local Civil Rule 3-12(a). Whenever a party believes an action filed in this district may be
2 “related to an action which is or was pending in this District . . . , the party must promptly file in the
3 lowest-numbered case an Administrative Motion to Consider Whether Cases Should be Related.” *Id.*
4 Rule 3-12(b).

5 Here, the *Monegas* Action concerns substantially the same parties as the *Keene* Action and the
6 Related Vaccine Actions, as the City and/or its constituent departments are parties in each of the
7 actions. The plaintiff in the *Monegas* Action erroneously named the San Francisco Department of
8 Public Health (“DPH”) as a defendant. DPH is a constituent department of the City, created and
9 existing under the authority of the City’s Charter. Under the San Francisco’s Charter, only the City has
10 the power to “appear, sue, and defend” in a civil action. S.F. Charter Article I, Section 1.101.

11 The plaintiffs in *Keene*, *Monegas* and the other Related Vaccine Actions are all current or
12 former City employees who are challenging the City’s vaccine mandate claiming that the City failed to
13 provide accommodations. If certified, the putative class in the *Guardado* Action could potentially
14 include the plaintiff in the *Monegas* Action. The *Monegas* Action, like *Keene* and the other Related
15 Vaccine Actions concern substantially the same events, as they arise out of challenges to the City’s
16 vaccine mandate, including the validity of the policy, both facially and as applied, would necessarily
17 affect the plaintiffs across all actions.

18 It is also “likely that there will be an unduly burdensome duplication of labor and expense or
19 conflicting results if the [*Monegas* Action were] conducted before [a] different Judge” than the other
20 Related Vaccine Actions. N.D. Cal. Local Civil Rule 3-12(a)(2). The *Keene* Action and the six other
21 Related Vaccine Actions, including the *Guardado* Putative Class Action, challenge the same policy
22 and are all pending before the Honorable Jeffrey S. White. In the interest of judicial efficiency, and to
23 avoid conflicting decisions, the *Monegas* Action too should be heard before Judge White.

24 ///

25 ///

26 ///

27 ///

28 ///

CONCLUSION

Because the *Monegas* Action is related to *Keene* and the Related Vaccine Actions, the Court should assert its case management authority over the *Monegas* Action, find that it is related and reassign the case to the Honorable Jeffrey S. White.

Dated: May 2, 2023

DAVID CHIU
City Attorney
JAMES M. EMERY
LAUREN E. WOOD
ADAM M. SHAPIRO
Deputy City Attorneys

By: /s/ Adam M. Shapiro
ADAM M. SHAPIRO

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO